stitutional, affords a much firmer basis for its decision of the principal case. In the *Union Pipe Co.* v. *Connolly* (1900) 99 Fed. 354, the same conclusion was reached. Such provisions can hardly be supported as fair classification. Disguised attempts at discrimination should be prevented; for they deny to persons the equal protection of the laws. But see *Waters Co.* v. *State, supra; State* v. *Brewing Co.* (1900) 104 Tenn. 715. The decision in *The Waters-Pierce Co.* v. *Texas* (1899) 177 U. S. 28, is properly distinguished from the principal case, for in the former, the fact that a foreign corporation can come into a State only by its grace was involved. While a State may withdraw such permission, the passage of an unconstitutional regulation of the right of contract does not operate as such a withdrawal.

A decision of the United States Supreme Court, still further defining the principles of corporate trusts as involved in the principal case, would be of great interest in the present condition of the law.

HEARSAY IN CASES OF PEDIGREE.—The rule that hearsay evidence is admissible in cases of pedigree having since an early day, been recognized in English law, has been accurately defined and restricted to cases where a geneological dispute is in issue. In *Goodright d. Stevens* v. *Moss* (1777) Cowper, 592, Lord MANSFIELD said that tradition was sufficient evidence in cases of pedigree. This broad doctrine was limited in *Whitelock* v. *Baker* (1807) 13 Ves. 514, by Lord ELDON, who said: "It was not the opinion of Lord Mansfield, or of any judge, that tradition, generally, is evidence even of pedigree; the tradition must be from persons having such a connection with the party to whom it relates that it is natural and likely, from their domestic habits and connections, that they are speaking the truth, and that they could not be mistaken." The famous *Berkley Peerage Case*, 4 Camp. 401, decided in 1811, laid down the rule as to pedigree in a manner which has ever since been followed in the English courts. In that case it was decided that in order that declarations be admissible, the declarant must be dead and must have been related by blood or by marriage to the person whose pedigree is in question, that the declaration must have been made *ante litem motam* and that pedigree must be directly in issue.

In New York, on the other hand, the rule seems, with a few exceptions, to have been relaxed. Thus in *Jackson* v. *Cooley* (1811) 8 Johns. 99, a witness was allowed to testify as to declarations made by acquaintances of the family, although it was not even proved that the declarants were dead. The English case of *Goodright* v. *Moss, supra,* was the authority cited for the proposition. SPENCER, J., dissented. In *Jackson* v. *Boneham* (1818) 15 Johns. 226, THOMPSON, C. J., who had written the opinion in *Jackson* v. *Cooley, supra,* again allowed evidence of this character. The next case, in point of time, is *Jackson* v. *Browner* (1820) 18 Johns. 37. SPENCER, J., who had dissented in the previous cases, wrote the opinion. He suggested that the rule be narrowed, but the decision

itself, limited the rule in one respect only, namely, that the declarant must have been related to the person whose pedigree is in question. However, in *Jackson* v. *Etz* (1826) 5 Cowen, 314, this restriction was again lost sight of. The cases decided since that time showed no tendency to approach the well defined rule laid down by the English courts, and it was impossible to tell in advance in what cases hearsay evidence would be admitted or excluded. It was with a feeling of relief therefore, that lawyers welcomed the decisions of *Eisenlord* v. *Clum* (1891) 126 N. Y. 552, where PECKHAM, J., reviewed the English decisions, approving the rule they stated. While the declarations in the case were made by a relative of the plaintiff, the learned judge, by way of *dictum* approved of the holding of *Jackson* v. *Ross*, *supra*, in which declarations by acquaintances had been admitted. Hence it will be seen that the law of New York on the subject of pedigree has not yet been settled, though tentatively approaching the English rule.

In the recent case of *Washington* v. *Bank for Savings in the City of New York* (1901) 72 N. Y. Supp. 752, the plaintiff, as administrator of one Margaret Hunter, sued the defendant to recover two deposits made by the deceased "in trust for son Thomas and son John." To prove that his intestate never had any sons, the plaintiff was allowed to give in evidence, statements made by the deceased to the effect that she had never had any children. The court says that as it is a well settled rule of evidence that hearsay may be admitted to prove birth of issue, it follows, that the same kind of evidence is admissible to establish that a person never had issue, citing *People* v. *Fulton Fire Ins. Co.* (1840) 25 Wend. 205. There are *dicta* in that case, which tend toward such a result, but as all of the evidence was excluded on another ground, the case is not of much value as an authority. The holding in the principal case, however, while an extension of the rule, seems sound. The declarations of the deceased were logical evidence, and the best to be obtained under the circumstances.

But on another ground the evidence should not have been admitted, because the primary question at issue was not one of pedigree. *Conn. Life Ins. Co.* v. *Schwenk* (1876) 94 U. S. 593; *Haines* v. *Guthrie* (1884) 13 Q. B. D. 818. The evidence was not offered to prove parentage or descent. As said by PECKHAM, J., in *Eisenlord* v. *Clum*, *supra*, at p. 566: "Where these questions" (birth, parentage etc.) "are merely incidental and the judgment will simply establish a debt or a person's liability on a contract, or his proper settlement as a pauper and things of that nature, the case is not one of pedigree, although questions of marriage, legitimacy, death or birth are incidentally inquired of." The error made in this case frequently occurs in courts of other States. *Morrill* v. *Foster* (1856) 33 N. H. 379; *Du Pont* v. *Davis* (1872) 30 Wis. 170; *In Re Hurlbut's Estate* (1896) 68 Vt. 366.

BANK-CHECKS AS AFFECTED BY THE DRAWER'S DEATH.—When the drawer of a bank-check dies before the check is presented for pay-